

TERMS AND CONDITIONS-THE FACILITY AGREEMENT

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

"Agreement" means the Borrower's Application when duly approved by the Lender and these terms and conditions as may be amended, supplemented and restated or otherwise notified

"Facility" means the aggregate of the approved overdraft or Loan Amount or so much thereof as may have been disbursed and from time to time owes by the Borrower, and includes all the Borrower's obligations to the Lender

"Approved" means the acceptance by the Lender of the facility applied for or such lesser sum as it may in its sole discretion agree to advance to the Borrower including any terms of such approval as to the costs and the applicable interest rate or otherwise "Approval" shall have a corresponding meaning.

"Disbursement" means the crediting of the approved loan into the Borrower's account or by any other mode of making payment of the principal loan to the Borrower or his account.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organizational measures: as set out in the Data Protection Legislation in force at the time.

Data Protection Legislation: means the General Data Protection Regulation (GDPR); or Data Protection Act, No. 24 of 2019 of Kenya; or any other

legislation applicable to the protection of personal information in Kenya

Shared Personal Data: the personal data to be shared by the Borrower with VisionFund Kenya under this agreement.

Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: a) Personal data i.e. names and personal contact

information b.) Business data i.e. name of business, contact options, logo, business location, operating hours, acceptable payment methods, return policy.

"Authorities" means all national and local governments, government departments, county governments, supranational bodies, local or public authorities, statutory undertakings, states or agencies.

"Interest Rate" means the rate announced from time to time by the Lender as its base lending rate.

"The Lender" means VisionFund Kenya Limited and its successors and assigns.

"Borrower" means the applicant(s) specified in the Application and their personal representatives and assigns. Where there is more than one Borrower, their obligations are joint and several.

"Related Account" means any account in the Borrower's name or in which the Borrower has an interest by virtue of his position as a Director, Shareholder or Partner.

"Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereof, wherever imposed, levied, collected or withheld pursuant to any regulation having the force of law.

"Credit History Information" Means a credit report of the Borrower detailing the breakdown of the Borrower's credit history prepared by a credit bureau.

"Guarantor" means a person(s) introduced to the Lender by the Borrower as providers of a guarantee to the Facility.

1.2 In this Agreement:

1.2.1 Clause headings are included for convenience only and do not affect the construction of this Agreement;

1.2.2 Words denoting the singular include the plural and vice versa; and

1.2.3 Words denoting one gender include each gender and all genders.

1.3 In this Agreement, unless the context otherwise requires, references to:

1.3.1 Clauses are to the clauses of these terms and conditions;

1.3.2 Statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute;

1.3.3 A "regulation" shall include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Authority; and

1.3.4 references to this Agreement or any other document shall be construed as references to this Agreement or that document as in force for the time being and as from time to time amended, supplemented or replaced with the agreement of the relevant parties and (where such consent is, by the terms this Agreement or the relevant document, required to be obtained as a condition to such amendment, supplement or replacement being permitted) the prior written consent of the Lender.

1. Interest

1.1 The Borrower will pay (and authorises the Lender to debit his account with) interest on the facility at the annual rate which is specified in this Agreement or at such other rate as is determined by the Lender at its sole discretion. Interest shall be calculated on principle and debited monthly by way of simple interest according to the usual mode of the Lender but without prejudice to the right of the Lender to require payment of such interest when due.

1.2 The Lender reserves the right to change the Interest Rate and the applicable rate of interest at its sole and absolute discretion and shall advise the Borrower by issuing a thirty (30) day notice prior to any change in the rate of interest so payable and change of rate so advised will not prejudice in any way the Lender's right to recover interest charged subsequent to such change.

1.3 If at any time during the continuance of the facilities, the amount drawn by the Borrower from the Lender is in excess of the facilities committed by the Lender under this Agreement or any sums payable by the Borrower under this agreement are not paid on the date on which they are due in accordance with the provisions of this agreement and whether demand has been made or not on the Borrower to repay the same and whether notice has been given or not to the Borrower to repay the same, the Borrower shall pay additional interest (after as well as before any demand made or judgment obtained or the liquidation or administration of the Borrower) at the rate of per cent per annum for the

Kenya Shillings denominated facilities. Such interest shall be additional to the interest charged on the principal sum and shall be compounded in the event of it not being punctually paid with monthly interests in accordance with the usual practice of the Lender but without prejudice to the right of the Lender to require payment of such interest when due. The Borrower acknowledges and agrees that the aforesaid additional rate of interest represents a reasonable pre-estimate of the loss to be suffered by the Lender in funding the default on the Borrower's part.

2. Approval & Effectiveness.

- 2.1 The Lender may approve the full facility applied for or a lesser sum or decline the application in its sole discretion without giving any reasons, such decision of the Lender may be by endorsement to that effect in the relevant part of this agreement, or by a separate letter and in either case it shall be effective to bind the parties without any further act by the Borrower.
- 2.2 The signature and delivery of this application by the Borrower is deemed conclusive evidence of the Borrower's agreement to be bound by the terms of the facility as to the amounts of the facility and interest as approved and determined by the Lender.
- 2.3 The facility and conditions contained in this agreement shall become effective and the Borrower's obligations to the Lender shall commence on the day that the Lender disburses the approved amount by crediting the Borrower's account or otherwise by applying the principal loan proceeds for the Borrower's account or marking the limit on the Borrower's account

3. Expenses

- 3.1 The Borrower shall pay to the Lender and shall fully indemnify and reimburse upon demand all costs, charges and expenses (including legal and other professional expenses, stamp, registration or other duties and any VAT) incurred by the Lender in connection with the preparation and execution of, the obtaining of any documents required under, and the enforcement of, or the preservation of any rights under this agreement or otherwise in connection

with the Facility. Failure to pay these amounts on their due dates or on demand date as applicable, the Lender reserves the right to debit the same together with any interest accrued on the amounts from the Borrower's account.

4. Payments

- 4.1 All payments by the Borrower hereunder shall be made to the Lender through **Mpesa Paybill No. 200555**, quoting their National Identification Number as the account number and presided by letter (L) e.g. L12345678 or a deposit into VisionFund Kenya Ltd's **KCB account No. 1103551639, Jogoo Road Branch**. The Lender will not be held liable for any payments made through any other means whatsoever.
- 4.2 Without prejudice to the Lender's rights to require payment or otherwise recover amounts due hereunder from the Borrower, the Lender may debit any amount due hereunder to any current or other account of the Borrower maintained with the Lender, notwithstanding that the maximum amount permitted to be outstanding in respect of such account may be exceeded. Thereafter the amount so debited shall be treated as owing on the terms of such current or other account for all purposes.
- 4.3 All payments due to be made by the Borrower hereunder, whether of principal, interest or otherwise, shall be made without regard to any equities between the Borrower and the Lender and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent the Borrower is required by law to deduct or withhold any Taxes on any amounts payable hereunder, in which case the Borrower shall promptly pay to the Lender such additional amount as is necessary to ensure that the net amount received by the Lender after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) is equal to the amount that the Lender would have received had no such deduction or withholding been made. The Borrower will furnish the Lender within one month after the relevant payment is made with an official receipt of the relevant taxation authorities evidencing payment of any Taxes. In the event of failure to provide the receipts within one month as provided for herein, the Lender reserves the right to debit the amounts so deducted from the Borrower's account.
- 4.4 All interest and other payments of a periodic nature under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 365 day year (or such other day count as the Lender decides has become market practice).
- 4.5 The Borrower understands that in all instances the onus is on the Borrower to ensure that sufficient funds are available to meet the repayments of the loan as indicated on the date specified in the *repayment schedule*, annexed hereto. The order of the loan repayment is as follows: first additional interest is covered (in case if such liability exists); then accumulated interest; and finally the principal of the loan.

5. Representations and Warranties.

- 5.1 The Borrower hereby represents and warrants to the Lender that:
- 5.2 On execution by the Borrower, each of the Documents forming the agreement to which the Borrower is expressed to be a party will constitute a valid and binding obligation of the Borrower legally enforceable in accordance with its terms;
- 5.3 All information submitted by the Borrower to the Lender, inter alia, on his financial position, net worth, details of indebtedness, presents accurately his state of affairs and the financial position of the Borrower as at such date.
- 5.4 No litigation, mediation, arbitration or other legal or dispute resolution proceedings are taking place, pending or, to the knowledge of the Borrower, threatened against the Borrower which could have a material adverse effect on the assets or financial condition of the Borrower; and
- 5.5 No Event of default as defined in this agreement has occurred and/or is continuing.
- 5.6 The representations and warranties set forth in this paragraph are given and made on and as of the date hereof and shall survive the acceptance of this facility and are continuing representations and warranties which are deemed to be repeated during the continuance of the facilities.

6. Covenants

- 6.1 The Borrower covenants with the Lender that, from the date of this Agreement until all moneys owing to the Lender in respect of the Facility including all costs and interest due under clauses (2), (4) and (8) of this Agreement have been paid in full:

- 6.2 The Borrower will inform the Lender of any Call in Event forthwith upon becoming aware of the same.

7. Insurance

- 7.1 The Lender may require the Borrower to take insurance to cover such events as death and or disability or Borrower, Livestock and Crop through the Lender's approved insurance plan. The Borrower authorizes and gives consent to the Lender to enter into separate arrangements with insurers on behalf of the Borrower to cover the risk.
- 7.2 The Borrower undertakes to pay the insurance premiums stipulated by the Lender from time to time. The Borrower also understands and accepts that in the event of default on the facility or delay in payment of insurance premiums, the insurance may not be valid and the Borrower will continue to be liable for repayment of all monies due to the Lender.
- 7.3 The Borrower also understands and accepts that not all types of disability or death may be covered by insurance. The Borrower will continue to be liable for any shortfall in the amount received from the insurers.
- 7.4 By executing the *Life Insurance Registration Form*, the Borrower affirms and acknowledges their understanding of the benefits and the claim process of the life insurance which is in-built within the facility. The Borrower shall retain a copy of the form which shall be surrendered in the unlikely event of a claim.
- 7.5 The Borrower shall give notice to the Lender within 48 hours of any occurrence which gives rise, or might give rise, to a claim under the policy of insurance and, except with the prior written consent of the Lender, the Borrower shall not agree to settlement of any such claim.
- 7.6 All insurance proceeds (life, livestock and crop) received by the Lender in respect of any claim made under the insurance will be applied by the Lender in repayment of the facility. Any surplus after such application will be paid to the Borrower's account.

8. Event of Default

- 8.1 "Event Default" means the occurrence of any of the following events or circumstances" -
- (a) Failure by the Borrower to make any single repayment of principal or payment of interest, costs or other moneys in respect of the Facilities on its due date, or
 - (b) A breach in the performance of any other term and condition of the Facilities or any covenant by the Borrower or any term and condition of any of the Security Documents or any other security held by the Lender for the Facilities, or
 - (c) A trustee, sequestrate or similar officer being appointed of all or any of the assets of the Borrower, or
 - (d) Death or permanent incapacity of the Borrower
 - (e) A distress, execution or other legal process being levied against any of the assets of the Borrower and not being discharged or paid within 7 days, or
 - (f) Failure to provide any collateral or security when so requested by the Lender.
 - (g) Any indebtedness of the Borrower becoming immediately due or payable or capable of being in default on the part of any person, or the Borrower failing to discharge any indebtedness on its due date, or
 - (h) If, in the sole opinion of the Lender, there is a material adverse change in the Borrower's financial condition or
 - (i) if any material part of the assets or revenues of the Borrower is nationalized, compulsorily acquired, seized or appropriated, or
 - (j) Any representation or warranty made by the Borrower hereunder or for the purpose of obtaining the Facilities being incorrect in any material respect as of the date of which it is made or deemed to be made, or there being any material adverse change of the position as set out in such representation of warranty, then the Lender's commitment to advance the Facilities or any balance thereof shall cease and the whole amount of the outstanding Facilities and all accrued interest, costs or other amounts owing hereunder will become repayable forthwith on demand in writing made by the Lender at any time. Any moneys not paid following a demand under this Paragraph shall continue to attract interest at the contracted rate as well as before judgment or any Bankruptcy or liquidation of the Borrower.
- 8.2 Upon the occurrence and during the continuance of default as stipulated in clause (9.1) above by the Borrower, the Lender shall have authority at any time, without notice to the Borrower and to the fullest extent permitted by law, to set-off any amounts held by the Borrower in related accounts including that of guarantors and apply and execute any and all security held by the Lender for the Facility.
- 8.3 In addition, the Lender will have the right to exercise any remedies available to it as prescribed by the Laws of Kenya to recover any monies owed to it

9. Changes in circumstances.

If any change in applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof shall make it impracticable or unlawful for the Lender to maintain or give effect to its obligations under this Agreement, the Lender shall give notice in writing to the Borrower of such event and the Lender's obligation to make the Facility available shall be cancelled and the Borrower shall immediately upon receipt of such notice repay to the Lender the Facilities and accrued interest thereon to the date of repayment.

10. Other Terms And Conditions

- 10.1 No failure, delay or other relaxation or indulgence on the part of the Lender to exercise any power right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power right or remedy preclude its further exercise or the exercise of any other power right or remedy.
- 10.2 All moneys payable by the Borrower under, the benefit of the covenants of the Borrower contained in, and all other rights of the Lender under, this Agreement shall be assignable and remain valid and effective in all respects in favour of any assignee transferee or other successor in title of the Lender in the same manner as if such assignee transferee or other successor in title has been named in this Agreement as a party instead of or in addition to the Bank.
- 10.3 The Lender may disclose to any proposed assignee or transferee or to its Holding Company, Subsidiary, or any Subsidiary of

- its Holding Company (whether or not they are proposed assignees or transferees) such information as is in its possession at any time relating to the Facilities or the Borrower.
- 10.4 Any change in the constitution of the Lender or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person or any reconstruction or reorganisation of the Lender shall not in any way prejudice or affect its rights under this Agreement.
 - 10.5 Any right or power which may be exercised or any determination which may be made under this Agreement by the Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons there for.
 - 10.6 A certificate by any officer or other duly authorised official of the Lender as to the money and liabilities for the time being due or accrued from or by the Borrower pursuant to any of the Facility Documents or the amount of any interest, commission or other sums owing pursuant to any of this Agreement shall save for manifest error be conclusive evidence in any legal proceedings.
 - 10.7 Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
 - 10.8 The Facilities are availed by the Lender subject to the Lender's General Terms and Conditions unless varied or inconsistent with the terms of this Agreement. In the event of any inconsistency between the terms of this Agreement and any general terms and conditions of the Lender (whether in force currently or at any time after the date of this Agreement), the terms of this Agreement shall prevail,
 - 10.9 All rights of the Lender contained in this Agreement are in addition to all rights vested or to be vested in the Lender pursuant to the common law or statute.
 - 10.10 The Lender shall not be liable for the acts or omissions of its advocates, valuers or other professional advisers.
 - 10.11 The Borrower hereby agrees (i) that the Lender may in its discretion record any telephone conversations between the Borrower and the Lender made in connection with this Agreement and (ii) that the Borrower will not object to such recordings being produced in evidence in a court of law.
 - 10.12 The Borrower hereby expressly consents and authorizes the Lender to disclose, respond, advise, exchange and communicate the details or information pertaining to the Borrower's account(s) and those of the Borrower's guarantors, to other Banks, financial institutions, mobile network operators, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Lender. The Borrower also authorizes the aforementioned agencies to use, process the said information and data disclosed by the Lender in the manner deemed fit by them.
 - 10.13 The Borrower further releases the Lender and aforementioned agencies in 10.12 and their officers, employees and agents from all claims, actions or proceedings of whatsoever nature and howsoever arising, suffered or incurred in connection with this sharing and access for the purpose afore stated.
 - 10.14 The Borrower agrees not to disclose to any third parties any information provided by the Lender in connection with this offer, except to those legally required.
 - 10.15 Upon full discharge of the Facility, the Borrower is at liberty to access and request withdrawal of any securities held by the Lender within reasonable time.

11. Data Protection

- 11.1 *The Lender shall comply with all the obligations imposed on a controller under the Data Protection Legislation in relation to the Shared Personal Data.*
- 11.2 *The Lender shall comply with all the obligations imposed on a controller under the Data Protection Legislation in relation to the Shared Personal Data, including the following:*
 - (a) *to ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Representatives for the Purpose;*
 - (b) *to process the Shared Personal Data only for the Purpose;*
 - (c) *not to disclose or allow access to the Shared Personal Data to anyone other than the Representatives;*
 - (d) *to ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Shared Personal Data and against accidental loss or destruction of, or damage to, the Shared Personal Data; and*
 - (e) *not to transfer any of the Shared Personal Data received from the Borrower outside Kenya unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection legislation applies to the transfer.*
- 11.3 *Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to the Shared Personal Data and in particular, each party shall:*
 - (a) *assist the other party in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;*
 - (b) *notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;*
 - (c) *use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers; and*
 - (d) *maintain complete and accurate records and information to demonstrate its compliance with this clause 5.3 and allow for audits by the other party or the other party's designated auditor.*

11.4 Data Subjects have the right:

- (a) to access their personal data;
- (b) to restrict processing;
- (c) to object to processing;
- (d) to rectification;
- (e) to have their data transferred (Data Portability); and
- (f) to have their data erased.

12. Mandatory disclosure

12.1 Subject to the provisions of this clause 6, the Lender may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the laws or regulations of any country to which its affairs are subject.

12.2 Before the Lender discloses any Confidential Information pursuant to clause 6.1 it shall, to the extent practicable and permitted by law, use all reasonable endeavours to give the Borrower as much notice of this disclosure as possible.

13. Destruction of Confidential Information

13.1 At the written request of the Borrower, the Lender shall:

- (a) destroy or return to the Borrower all documents and materials containing, reflecting, incorporating or based on the Confidential Information; and
- (b) to the extent technically practicable, erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.

13.2 Nothing in clause 13.1 shall require the Lender to return or destroy any documents and materials containing or based on the Confidential Information that the Lender is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction

13. Notices

10.16 Each party may give any notice, request, demand or other communication under or in connection with this Agreement by letter, facsimile, email or other comparable means of communication. Any notice to the Borrower shall be addressed to last known address provided by the Borrower to the Lender. Notices to the Lender shall be addressed to the branch of the Lender where the application was made or the registered office of the Lender. Any such communication will be deemed to be given as follows:

- 11.1.1 If personally delivered, at the time of delivery;
- 11.1.2 If by letter, at noon on the third Business Day following the day such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and
- 11.1.3 If by facsimile transmission or comparable means of communication during the business hours of the other party then on the day of transmission, otherwise on the next following business Day.
- 11.1.4 If sent by email, on the date it is sent, whether or not actually received and the Lender's records shall be conclusive as to whether and when the email communication shall be considered to have been sent

10.17 In proving such service, it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

10.18 The Customer acknowledges that email communication may be illegible, unreliable, abused, delayed, mislaid or lost; that it may be tampered with or altered prior to, during or after transmission; may make the verification of signatures impossible; may result in the loss or leakage of confidential information and may result due to the aforesaid in incorrect transfers or transactions.

10.19 The Lender shall not be liable for and the Borrower hereby irrevocably and unconditionally indemnifies and holds the Lender harmless against any and all loss, damage and expense whatsoever, whether suffered or incurred directly or indirectly by the Lender, or Third Parties arising out of or in connection with the Lender's use of or reliance upon SMS/email communication, whether or not such instructions and/or communications are fraudulent, forged or in any way defective; provided that such loss was not due to the Lender's negligence or willful action.

10.20 The Lender provides the Borrower with a safe mechanism through the Lender's Whistleblower protection policy to report any issues of suspected misconduct, dishonesty, fraud, questionable accounting and any other concern and reassures the Borrower protection when reporting such cases. The Lender has provided the following contacts for such reporting; Hotline Numbers **254 706 200 555** or **254 722 200 402** and through email vfk_hotline@visionfund.org.

11. Law

This Agreement shall be governed by and shall be construed in accordance with Kenyan law.